

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

December 20, 2006

6:30 P.M.

City Council Chambers

Members Present: Rockis, Bernie Bossio, Mark Furfari, and Jim Shaffer.

Members Absent: Nick Iannone.

Staff Present: Chris Fletcher, Planning Director.

MATTERS OF BUSINESS:

Motion to approve the minutes of August 16, 2006 as amended, by Furfari, second by Shaffer. Motion carried unanimously.

Motion to approve the minutes of October 18, 2006 by Furfari, second by Shaffer. Motion carried unanimously.

Motion to approve the minutes of November 15, 2006 minutes by Rockis, second by Shaffer. Motion carried unanimously.

OLD BUSINESS: None.

NEW BUSINESS:

1. **V06-24 & CU06-12 / Genesse Properties, LLC / Beechurst Avenue:** Request by Genesse Properties, LLC for variance approval from Appendix A: Development Standards Table for property located on Beechurst Avenue. Tax Map #26 Parcels #34-35; an R-3, Multi-family Residential District.

Fletcher explained that the applicant requested tabling until the next meeting.

Motion to table as requested by Rockis, second by Shaffer. Motion carried unanimously.

2. **CU06-13 / Smith Rentals, LLC / Kingwood Street:** Request by Smith Rentals, LLC for conditional use approval for off site parking for property located 55 Kingwood Street. Tax Map #29 Parcel #199; a B-2, Service Business District.

Fletcher read the staff report stating that Smith Rentals, LLC seeks approval to have off-site parking to utilize an additional one-bedroom rental unit at 361/365 Brockway Avenue. Currently the multi-family structure has three (3) registered

rental units. The previous owner could not show sufficient evidence that the fourth unit was a grandfathered rental unit and was instructed that he would have to provide parking in order to register same. Under new ownership, Mr. Andrew Smith has signed a short-term three-month parking lease with Ervin's Towing at 55 Kingwood Street.

Fletcher read that according to Article 1365.07 – Off-Site Parking Facilities of the Planning and Zoning Code, in business, industrial and multi-family districts, the Board may grant conditional use approval to provide required spaces on a site that is: 1) within 300 feet of the principal use; and, 2) within a district that permits commercial parking lots as principal or conditional use. The proposed grandfathered parking area is within 300 feet as illustrated in Addendum A of this report. It is the responsibility of the owner to maintain current and valid parking as required by the Planning and Zoning Code. Evidence of such parking is required prior to approval and proof of current leases shall be made available at the request of Planning Director.

Fletcher clarified that the Planning and Zoning Code also provides that such off-site parking facilities be encumbered by an easement or similar agreement duly executed and acknowledged, which specifies that the land upon which the off-site parking facility is located is encumbered by the parking use. Said instrument shall specify and bind the time period to the anticipated life of the building or use to which the parking facilities are accessory. Said instrument must be placed on public record in the Office of the Clerk of the County Commission of Monongalia County.

Fletcher noted that the Planning Department has been advised by the petitioner that the owner of the Ervin's Towing off-site parking facility is not willing at this point to encumber the subject realty for the life of the dwelling unit and prefers a short-term, three-month lease arrangement. In October 2003, the Board granted a similar off-site parking approval to D & M Real Estate for a "Boarding and Lodging" use at 373 Brockway Avenue where parking was provided at 55 Kingwood Street as well. However, that approval included a four-year lease arrangement.

Paulette Smith, Smith Rentals, LLC, agent said that this was a condemned property that has been improved. They have a signed one-year lease with Ervin's and the attorney is looking at the papers for a three-year lease. The building originally had six apartments and they are looking at four.

Shaffer questioned how there were six apartments there.

Fletcher replied that the Rental Registration Program Coordinator reported only three registered units in that dwelling structure. They are grandfathered so no parking was required for those three units. They want to use space inside the structure to provide a fourth, not grandfathered, so they have to provide parking.

Shaffer noted that the only lease shown is for three months.

Fletcher answered that they have committed to an agreement for a year. He is still concerned it was not a sufficient length of time and there were additional provisions we wanted to incorporate.

Bossio inquired if the rental inspection is every two or every three years.

Fletcher responded that it is currently three years.

Bossio asked if the lease would coincide with inspection.

Fletcher advised that the ordinance is clear that the lease should be for the life of the building. From a rental registration standpoint, the life is every three years.

Bossio asked for public comments. There being none, the public portion was closed.

Fletcher explained that Staff supports efforts to provide adequate off-street parking. However, it is the opinion of the Planning Department that off-site facilities should be adequately secured as intended by the Planning and Zoning Code. The lease document submitted appears to be specific to a tenant of the subject dwelling unit and Ervin's, yet Smith Rentals, LLC is a signatory. In effect and according to the lease document, Mr. Roger Smith, a representative of Smith Rentals, LLC, has entered into a contract for the privilege of parking his 1997 Ford F150 at 55 Kingwood Street for a three-month period.

Fletcher noted that it is the opinion of the Planning Department that, although this instrument is prudent as it relates to the rights and responsibilities of the subject dwelling unit's tenant and Ervin's, it does not adequately secure the off-site parking facility between the two properties. Acceptable encumbrance for the purpose of the conditional use should instead be by and between the property owners specific to the realty in question with little or no regard to a specific tenant. The rights and responsibilities of the tenant should be addressed in the tenant's lease with Smith Rentals, LLC and/or a sublease with Ervin's, neither of which is necessarily significant to the subject conditional use. The Board must determine whether the proposed request meets the standard criteria for a conditional use by reaching a positive determination for each of the "Findings of Fact" submitted by the applicant.

Fletcher advised that Staff concurs with the findings of fact as submitted and recommends approval of the conditional use as requested with the following conditions:

1. That the off-site parking facility is encumbered by an easement or similar agreement, to the satisfaction of the Planning Director,

which is duly executed and acknowledged and specifies that the land upon which the off-site parking facility is located (55 Kingwood Street) is encumbered by the parking use of the subject dwelling unit (*address to be assigned by City Engineer*). That this instrument binds the use for no less than three-years. That said instrument is filed with the Planning Department and the Rental Registration Program of the City's Code Enforcement Division, and placed on public record in the Office of the Clerk of the County Commission of Monongalia County, WV.

2. That the leased space has a sign noting the residence for which the space is reserved. That such sign is 12 inches wide by 18 inches tall and shall be mounted between three feet and five feet above the finish surface of the parking stall. That the text on the sign state "This space is reserved for the residents of (insert address only, per City Code 1365.07 (D))."
3. That registration renewal with the City's Rental Registration Program for the subject dwelling unit, currently triennial, is conditioned upon demonstrating that the said agreement and encumbrance is extended for a period equal to the subject dwelling unit's registration period. That failure to provide such surety will result in the denial of registration and occupancy of the subject dwelling unit.

Shaffer asked what happens if the parking lease is broken.

Fletcher answered that if the Board approves the conditional use with the condition of an active agreement, and that is severed, it would become an illegal dwelling unit.

Motion to approve the Findings of Fact as submitted, by Shaffer, second by Rockis. Motion carried unanimously.

Motion to approve the conditional use request with Staff recommended conditions and the property owner to notify the City if the parking lease terminates by Shaffer, second by Rockis. Motion carried unanimously.

3. **V06-26 / Bialek / 533 Princeton Avenue:** Request by James and Karen Bialek for variance approval from Appendix A: Development Standards Table for property located at 533 Princeton Avenue. Tax Map #2 Parcel #6; an R-1, Single-family Residential District.

Fletcher read the staff report stating that the applicant seeks to construct a 12 ft. X 8 ft. addition (laundry room) on to the rear of the existing dwelling. The rear setback for the proposed addition is six (6) feet. The existing house was constructed facing Princeton Avenue rather than Fenwick Avenue, which prohibits compliance with the required rear setback for any size addition to the

rear of the structure. Additionally, the subject realty is 4,000 sq. ft., which is less than the minimum lot size for the R-1 District (7,200 sq. ft.). The minimum rear setback requirement for principle structures in the R-1 District is 25 feet. As such, the petitioner must obtain a 19-foot variance to permit the proposed six foot rear setback. The proposed improvement project meets all remaining applicable design and performance standards. Addendum A of this report illustrates the location site and photographs submitted by the petitioner of other houses within the neighborhood that do not comply with the rear yard setback requirements. There were two calls in support from Ann Smith, 1341 Fenwick, and Glen Cassino, 532 Princeton Avenue.

James Bialek, applicant, said that this has been their secondary home for four years and was never a rental property. It is a 780 square foot house. The kitchen laundry hookups were replaced with a central heating system by the previous owner. The rear deck, 10½' X 5½', already encroaches on the setback requirement. The new addition would add another 2½' beyond the current deck, which would come off.

Bossio asked for public comments. There being none, the public portion was closed.

Bossio had some questions about the drawing.

Bialek explained that the current deck is 5½' wide and the laundry room is 8' wide. The new deck would be adjacent to the laundry room.

The Board must determine whether the proposed request meets the standard criteria for a variance by reaching a positive determination for *each* of the "Findings of Fact" submitted by the applicant. Staff recommends approval of the variance as requested with the following amendments to the findings of fact:

- # 2 – There are other similar additions within the neighborhood that do not conform to rear setback requirements.
- # 3 – The proposed addition is consistent with property improvements made to surrounding neighborhood houses since their original construction. With the exception of the rear yard setback, the addition meets all other R-1 design and performance standards.

Furfari asked what is on the other side of the rear of his home.

Bialek replied that there is a house facing Fenwick which may be on a double lot.

Fletcher read each Finding of Fact and the Board voted on them individually.

- #1: Motion to find in the positive, as written, by Shaffer, second by Rockis. Motion carried unanimously.

#2: Motion to find in the positive, as amended by Staff, by Furfari, second by Rockis. Motion carried unanimously.

#3: Motion to find in the positive, as amended by Staff, by Shaffer, second by Furfari. Motion carried unanimously.

#4: Motion to find in the positive, as written, by Shaffer, second by Rockis. Motion carried unanimously.

Motion to approve the variance request by Shaffer, second by Rockis. Motion carried unanimously.

OTHER BUSINESS:

Public Comments: None.

Staff Comments: None.

ADJOURNMENT: 7:25 p.m.